UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PROPET USA, INC., Plaintiff, v. LLOYD SHUGART, Defendant.	CASE NO. C06-0186-MAT ORDER DENYING DEFENDANT LLOYD SHUGART'S RENEWED MOTION FOR ATTORNEYS' FEES AND GRANTING PORTION OF COSTS

Defendant Lloyd Shugart (hereinafter "Shugart") filed a renewed motion for attorneys' fees and costs pursuant to 17 U.S.C. §§ 505, 1203(b)(4),(5), and the "film delivery memo" at issue in this case. (Dkt. 189.) The Court denied Shugart's initial motion for attorneys' fees and costs without prejudice to his ability to file a properly supported motion. (Dkt. 187.) Shugart now reasserts his request, seeking an indeterminate amount of fees based on an enhancement of an asserted lodestar figure of "roughly $300,000.00." (Dkt. 189 at 4, 7-9.) Although not clarified in the renewed motion, the Court presumes Shugart's previous request for costs in the amount of $868.23 remains. (*See* Dkt. 177 and Dkt. 189, Ex. F. at 16.) Plaintiff Propet USA, Inc. (hereinafter "Propet") objects to the motion. (Dkt. 191.) Now, having considered the papers filed

in support and in opposition, along with the remainder of the record, the Court hereby DENIES Shugart's renewed request for attorneys' fees and GRANTS in part his request for costs for the reasons discussed herein.

BACKGROUND AND DISCUSSION

On September 27, 2007, a jury found in Shugart's favor on his three counterclaims – copyright infringement, violation of the Digital Millennium Copyright Act (DMCA), and stolen/lost photos (as based on the film delivery memo). (Dkt. 136.) With an election of statutory damages, Shugart's jury award amounted to a total of $1,303,000.00. (*Id.* and Dkt. 166.) The Court rendered final judgment in Shugart's favor on January 24, 2008. (Dkt. 175.)

Both the Copyright Act and the DMCA give the Court discretion to award costs and reasonable attorneys' fees to a prevailing party. 17 U.S.C. §§ 505, 1203(b)(4), (5). *Accord Fantasy Inc. v. Fogerty*, 94 F.3d 553, 555 (9th Cir. 1996) ("[A]n award of attorney's fees to a prevailing [party] that furthers the underlying purposes of the Copyright Act is reposed in the sound discretion of the district courts[.]") Therefore, because he is the prevailing party in this case, the Court may at its discretion award costs and reasonable attorneys' fees to Shugart. Also, the film delivery memo contains provisions accounting for attorneys' fees in the event of a dispute. (*See* Trial Exhibit 11.)

Shugart previously based a request for attorneys' fees in the amount of $521,200.00 on a contingent fee agreement entitling his counsel to an amount equal to forty percent of his recovery. (Dkt. 177, Ex. B.) He also argued the reasonableness of the award sought under the conventional lodestar computation, meaning the number of hours reasonably expended multiplied by a reasonable hourly rate. *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987).

He calculated the lodestar as amounting to $265,462.00, while arguing that such an amount should be enhanced based, in particular, on the high degree of risk involved in taking his case and the novelty and difficulty of the issues involved.

Propet objected to Shugart's request, contending that the amount of fees sought was excessive, asserting an absence of evidence that the asserted hourly rates – $625.00 per hour for attorney Phillip Mann and $450.00 per hour for attorney John Whitaker – are reasonable or customary, or that the amount of time spent by the attorneys was reasonable or necessary. (*See* Dkt. 177, Ex. C.) Propet contrasted the hourly rates with that of Shugart's initial attorney, Jon Payne, who billed at a rate of $245.00 per hour. (*Id*., Ex. D.) Propet also disputed the contention that the copyright and contract issues involved in this case were novel or especially difficult.

In denying Shugart's initial motion, the Court noted that the lodestar determination is "'the predominate element of the analysis' in determining a reasonable attorney's fee award." *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996) (quoting *Jordan*, 815 F.2d at 1262). As reflected above, that determination involves multiplication of the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Id*. "There is a strong presumption that the lodestar figure represents a reasonable fee." *Id*. at 363 n.8.

Following computation of the lodestar, the Court assesses whether it should adjust the presumptively reasonable lodestar amount based on factors outlined in *Kerr v. Screen Guild Extras, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), and not already subsumed in the initial lodestar calculation. *Morales*, 96 F.3d at 363-64. *Kerr* adopted the consideration of twelve different factors bearing on reasonableness:

(1) the time and labor required, (2) the novelty and difficulty of the questions

> involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

526 F.2d at 70. The subsumed factors presumably taken into account in the initial lodestar calculation include: "'(1) the novelty and complexity of the issues, (2) the special skill and experience of counsel, (3) the quality of representation, . . . (4) the results obtained,' . . . and (5) the contingent nature of the fee agreement[.]" *Morales*, 96 F.3d at 364 n.9 (internal quoted and cited sources omitted). "[U]pward adjustments of the lodestar are proper only in 'rare' and 'exceptional' cases, supported by specific evidence on the record and detailed findings by the district court." *Jordan*, 815 F.2d at 1262 (citing *Blum v. Stenson*, 465 U.S. 886, 898-901 (1984)).

In denying Shugart's motion, the Court clarified that it may not consider the latter subsumed factor – contingency – "in deciding to apply a multiplier to the lodestar fee *or in initially calculating the lodestar*." *Davis v. City and County of San Francisco*, 976 F.2d 1536, 1548-49 (9th Cir. 1992) (emphasis added) (citing *City of Burlington v. Dague*, 505 U.S. 557 (1992)). Shugart's argument as to contingency relied on cases involving attorneys' fees in Social Security benefits cases pursuant to 42 U.S.C. § 406(b), as opposed to fee-shifting statutes, like those at issue here. *See, e.g., Gisbrecht v. Barnhart*, 535 U.S. 789, 801-02, 806 (2002) ("Fees shifted to the losing party, however, are not at issue here. . . . 42 U.S.C. § 406(b) . . . does not authorize the prevailing party to recover fees from the losing party. Section 406(b) is of another genre: It authorizes fees payable from the successful party's recovery."; recognizing the lodestar method as "the guiding light of our fee-shifting jurisprudence."; emphasizing that "the lodestar

method was designed to govern imposition of fees on the losing party[,]" and that, "[i]n such cases, nothing prevents the attorney for the prevailing party from gaining additional fees, pursuant to contract, from his own client.") Shugart failed to address or even mention any of the law from the Ninth Circuit Court of Appeals on this issue. *See, e.g., Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007) ("[C]ontingency cannot be used to justify a fee enhancement, or an inflated hourly rate.") (cited cases omitted); *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1048 (9th Cir. 2000) ("A district court may not rely on a contingency agreement to increase or decrease what it determines to be a reasonable attorney's fee."); *Davis*, 976 F.2d at 1549 (stating that the Supreme Court in *Dague* declared that "the typical federal fee-shifting statutes . . . do not allow for upward adjustments to a lodestar fee on the basis that prevailing party's counsel incurred the risk of nonpayment."; "[W]e believe that [the *Dague* Court's] rejection of contingency as a basis for multiplying a lodestar fee similarly dictates that contingency not be a factor in the setting of billing rates. *Dague* represents an outright rejection of contingency as a factor relevant to the establishment of a reasonable fee; it would seem to be immaterial whether the consideration of contingency occurs in deciding to apply a multiplier to the lodestar fee or in initially calculating the lodestar.") (citing *Dague*, 505 U.S. 557).[1]

The Court also noted another critical failing in Shugart's initial motion as related to the

[1] Shugart asserts his right to appeal this issue based on an alleged unsettled nature of the law and based on reasoning set forth in both a dissenting opinion of *Dague* and a Washington State Supreme Court case, *Chuong Van Pham v. Seattle City Light*, 159 Wn.2d 527, 541-42, 151 P.3d 976 (2007) (declining to "disapprove of contingency multipliers altogether.") The Court stresses that Shugart's position on this issue does not excuse his failure to attempt to distinguish or even mention the above-described case law, particularly given that he relied predominantly on the issue of contingency in his motion.

establishment of a reasonable hourly rate. "The determination of a reasonable hourly rate 'is not made by reference to the rates actually charged the prevailing party.'" *Welch*, 480 F.3d at 946 (quoted sources omitted). Instead:

> The prevailing market rate in the community is indicative of a reasonable hourly rate. The fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits of its counsel, that the requested rates are in line with those prevailing in the community for similar services of lawyers of reasonably comparable skill and reputation. If the applicant satisfies its burden of showing that the claimed rate and number of hours are reasonable, the resulting product is presumed to be [a] reasonable fee . . . .

Jordan, 815 F.2d at 1262-63 (citing *Blum*, 465 U.S. at 895-97). *See also Carson v. Billings Police Dep't*, 470 F.3d 889, 892 (9th Cir. 2006) (holding that the prevailing market rate – not the individual contract between the attorney and the client – "provides the standard for lodestar calculations"). "Failure to provide evidence of prevailing legal rates in the community leaves a court with an insufficient basis from which to conclude that the rates requested are 'reasonable.'" *Southerland v. International Longshoremen's and Warehousemen's Union, Local 8*, 845 F.2d 796, 801 (9th Cir. 1987) (remanding where "counsel submitted affidavits stating his experience and that the rates claimed were reasonable," but where "there [was] no evidence in the record that [the] rates were comparable with the prevailing rates in the community.") (citing *Jordan*, 815 F.2d at 1263 n.9). In his initial motion, Shugart provided no support for his bare assertion that the asserted hourly rates were reasonable.

The Court also indicated that it must "exclude from [the] initial fee calculation hours that were not 'reasonably expended,'" including "excessive, redundant, or otherwise unnecessary" work. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). While noting that Shugart did submit billing records from his current and former counsel (*see* Dkt. 177, Exs. C & D), the Court declined

to closely analyze that evidence pending further briefing.

Denying Shugart's motion without prejudice, the Court stated that a renewed motion must reflect an accurate statement of the law and contain adequate support for the request made. Now, considering the renewed motion, the Court once again finds Shugart's request for attorneys' fees deficient.

As reflected above, the hourly rates at issue here include the following: $625.00 per hour for attorney Phillip Mann; $450.00 per hour for attorney John Whitaker; and $245.00 per hour for attorney Jon Payne. Shugart states that Mann and Whitaker are intellectual property litigators with nearly twenty-five years and twelve years experience respectively. Shugart also states that both attorneys hold engineering degrees and routinely handle litigation involving complex computer-related technologies and issues, especially pertinent to the DMCA claim in this case. Finally, Shugart describes Payne as having almost twelve years legal experience with a focus on complex civil litigation, commercial litigation, county and municipality law, and civil appellate practice. However, for the reasons described below, the Court concludes that Shugart once again fails to meet his burden of producing satisfactory evidence that the asserted rates are in line with those prevailing in the community.

First, the fee applicant bears the burden "to produce satisfactory evidence – *in addition to the attorney's own affidavits* – that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum*, 465 U.S. at 895-97 (emphasis added); *accord Jordan*, 815 F.2d at 1262-63 (same). Here, in two separate motions filed with this Court, none of the above attorneys submitted affidavits or declarations in support of their request for attorneys' fees.

Second, the declarations that are submitted by Shugart fall short of establishing the reasonableness of the hourly rates. David Tellekson attests to his twenty-five years experience in intellectual property litigation and status as a managing partner in a law firm, and states his belief that the rates asserted by Mann and Whitaker are reasonable in light of what other lawyers with comparable skills and background charge in this market. (Dkt. 189, Ex. A.) Yet, Tellekson fails to identify his own billing rate. Gregory Wesner, an intellectual property litigator with more than seventeen years experience and a member of his firm's Associate Compensation Committee, likewise attests to the reasonableness of the rates without identifying his own billing rates or those of like experience within his firm. (*Id*., Ex. D.) On the other hand, Steven Fricke, an attorney with thirteen years of experience in the practice of intellectual property litigation and client counseling, states his hourly rate of $475.00 per hour and his belief that his rate is commensurate with other attorneys of similar skill and experience in the Seattle area, without any assertion as to the reasonableness of the rates asserted by the attorneys involved in this case. (*Id*., Ex. B.) Shugart also attaches a December 2007 Order awarding Fricke $23,230.00 in attorney's fees in a case in this Court based on his then standard billing rate of $450.00 per hour. (*Id*., Ex. C.) While these two submissions appear at first glance to support at least Whitaker's rate, a review of the declaration submitted by Fricke in that 2007 case reveals his status as a registered patent attorney, *see High Maintenance Bitch, LLC v. Uptown Dog Club*, Inc., C07-888TSZ (Dkt. 21), a qualification associated with neither Mann nor Whitaker and which significantly differentiates Fricke's skill level and billing rate.

In contrast, Propet's counsel, Bruce Kaser and James Philips, both intellectual property litigators with some twenty-five years experience, attest to, respectively, hourly rates of $265.00

and $375.00 per hour. (Dkts. 192 and 193.) Propet also submits declarations from two other intellectual property litigators with over forty and twenty years experience who attest to, respectively, hourly rates of $295.00 and $425.00 per hour. (Dkts. 194 and 195.) While not dispositive, the billing rates of attorneys are relevant evidence of a reasonable hourly rate in a particular locality. *See Maldonado v. Lehman* , 811 F.2d 1341, 1342 (9th Cir. 1987). The declarations submitted by Propet, when contrasted with the evidence submitted by Shugart, call the reasonableness of the rates asserted by Mann and Whitaker into question.

Shugart also relies on the so-called "Laffey Matrix" to support his argument. However, the Court finds this reliance misplaced given that the Laffey Matrix largely detracts from his position. The Laffey Matrix sets out prevailing market rates of practicing attorneys in the District of Columbia and, for the years 2007 and 2008, sets those rates at $440.00 per hour for attorneys with twenty or more years experience and at $390.00 per hour for attorneys with eleven to nineteen years experience. (Dkt. 189, Ex. E.) Shugart avers that, using the Laffey Matrix as a guide, Payne's hourly rate falls well below the accepted hourly rate of $390.00 per hour for general practice attorneys of a similar level.[2]

Yet, critically, given that the bulk of fees in this case are attributable to the work of Mann and Whitaker,[3] the Laffey Matrix does not support the rates asserted by those attorneys, with

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[2] The Court notes that, although such a distinction may well be appropriate, the Laffey Matrix document submitted by Shugart does not differentiate between general practice and more specialized counsel. (*See* Dkt. 189, Ex. E.)

[3] Billing records attached to Shugart's renewed motion show $260,455.00 total in fees for services provided by Mann, Whitaker, and support staff, and $34,710.64 in fees for services provided by Payne's firm. (Dkt. 189, Ex. F at 16 and 66.)

Whitaker's rate rising to $60.00 more an hour and Mann's rate a substantial $185.00 more an hour. Despite these significant differences, responding to Propet's contention that the Laffey Matrix figures are irrelevant to the Seattle market, Shugart contends locality pay differentials support an almost exactly one-to-one translation between the District of Columbia and Seattle markets. (*See* Dkt. 197 at 3-4 and Ex. A.) Shugart fails to explain how, in particular, the Laffey Matrix could possibly support a $625.00 per hour prevailing market rate in this community. Also, while the Court can consider the Laffey Matrix figures while accounting for locality pay differentials, *see, e.g., In re HPL Techs., Inc. Secs. Litig.*, 366 F. Supp. 2d 912, 921 (N.D. Cal. 2005), it finds the Laffey Matrix, alone, insufficient to establish the prevailing market rates in this community. *See Camacho v. Bridgeport Financial, Inc.*, ___ F.3d ___, No. 07-15297, 2008 U.S. App. LEXIS 8665, at *11 (9th Cir. Apr. 22, 2008) ("Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits. '[R]ates outside the forum may be used if local counsel was unavailable, either because they are unwilling or unable to perform because they lack the degree of experience, expertise, or specialization required to handle properly the case.'"; finding district court erred in failing to assess or determine prevailing hourly rate in the relevant district) (citing and quoting *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)).

Finally, Shugart provided no declarations or other support for the billing rates of other professionals involved in this case. As noted by Propet, records from Payne's firm indicate the involvement of several other individuals – Laura Doyle, with a billing rate of $125.00 per hour; Pam Gregory, with a billing rate of $135.00 per hour; and Sandip Soli, with a billing rate of $220.00 per hour. (Dkt. 189, Ex. D at 3.) Shugart also acknowledged in his reply the work

performed by Eryn Deblois, a paralegal and law clerk to Mann, with a billing rate of $150.00 per hour. From a review of the billing rates, it may be concluded that Soli is an attorney. However, there is no information in the briefing as to his experience level and expertise. Also, while the Court agrees with Shugart that work performed by non-attorneys is compensable, *see, e.g.*, *United Steelworkers v. Phelps Dodge Corp.*, 896 F.2d 403, 407-08 (9th Cir. 1990), it remains that he has made no showing – outside of his assertion that Deblois's rate is consistent with the Laffey Matrix – as to the reasonableness of the rates of these individuals.[4]

The Court likewise finds the evidence submitted as to the hours expended on this case deficient. Shugart asserts that his attorneys collectively dedicated approximately 633 hours to litigate this matter and provides billing records. However, the 633 hours does not appear to include the hours expended by Payne's firm. (*See* Dkt. 189, Ex. F at 16.) Additionally, there is no breakdown of the hours spent on various tasks or discussion of any possible duplication of efforts given the various attorneys and other legal professionals involved in this case. *See Hensley*, 461 U.S. at 434 ("Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. 'In the private sector, "billing judgment" is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority.'") (quoting *Copeland v. Marshall*, 641 F.2d 880, 891

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[4] In fact, the Laffey Matrix supports a rate of $125.00 per hour for paralegals and law clerks in the District of Columbia for the years 2007 and 2008. (Dkt. 189, Ex. E.) Given that she accounted for almost 200 of the some 633 hours total expended by Shugart's current counsel (*see* Dkt. 189, Ex. F), the evidence as to Deblois is particularly significant.

(D.C. Cir. 1980) (en banc) (emphasis in original)). Nor are the billing records accompanied by affidavits or declarations from counsel confirming their truth and accuracy.

Noting that the Court, in its previous Order, advised Propet to support any challenge on this issue with a detailed analysis of the evidence submitted and the relevant case law, Shugart again simply attaches the billing records from his attorneys. Yet, the Court also previously noted that it had not yet closely analyzed the evidence submitted and did not assert the sufficiency of that evidence. Ultimately, Shugart bears the burden of establishing the appropriateness of his fee request. *Hensley*, 461 U.S. at 437. *See also Frank Music Corp. v. Metro-Goldwyn-Mayer Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989) ("The trial court correctly refused to accept uncritically plaintiffs' counsel's representations concerning the time expended. Plaintiffs bear the burden of showing the time spent and that it was reasonably necessary to the successful prosecution of their copyright claims. The lack of contemporaneous records does not justify an automatic reduction in the hours claimed, but such hours should be credited only if reasonable under the circumstances and supported by other evidence such as testimony or secondary documentation.") (internal citation to *Sealy, Inc. v. Easy Living, Inc.*, 743 F.2d 1378, 1385 (9th Cir. 1984)). He fails to meet that burden here.[5]

Shugart does raise arguments in support of the hours expended in this case. He contends the reasonableness of the hours based on the fact that he was forced to bring his counterclaims at a time when he was ill-prepared to do so, the lack of any reasonable attempt at settlement, and his success in the face of multiple summary judgment and post-trial motions, as well as at trial. He

[5] At the same time, the Court recognizes that Propet inadequately responded on the issue of hours. Moreover, many of its objections could have been cured through discovery.

also generally argues as to his procedural disadvantage and the novelty and difficulty of the issues involved in this case.

However, Shugart's claim as to his disadvantageous position as a defendant in this matter is not well taken. Documents produced in litigation reveal that Shugart threatened Propet with a lawsuit and a sale of the images at issue in this case on E-Bay if his demands for a financial settlement were not met by a specific deadline. (*See* Dkt. 183, Ex. E.) While he may have felt ill-prepared, Shugart cannot reasonably express surprise at the lawsuit. Nor does the Court perceive or the record reveal any actual disadvantage to Shugart as a defendant/counter claimant in this matter as a whole. Indeed, at trial, the Court allowed Shugart to proceed first. Additionally, while the Court declines to address in detail its perception of the quality of the legal work in this case, it is enough to say that it finds Shugart's two ill-supported motions for attorneys' fees emblematic of the inadequate effort expended by both parties in this litigation. It is also worth noting that Propet's multiple summary judgment motions were the result of the Court's findings as to their prematurity and/or deficiencies, as opposed to the actions of an overly zealous litigant (*see, e.g.*, Dkts. 66, 82, and 118), and that Shugart faced only a single defense witness to his counterclaims, an individual with whom he had no contact during the course of his business relationship with Propet (*see* Dkt. 148 at 321-22). Finally, the Court disagrees with the contention that the legal issues in this case were especially novel or difficult. It could be argued, for example, that the paucity of case law on the DMCA worked to Shugart's advantage.[6]

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[6] Shugart also cites a survey reflecting the median costs of intellectual property litigation in support of the hours expended. He asserts that Propet alleged that the amount in dispute was $30 million and that the median cost for such a litigation amounts to $1 million through trial, while a jury verdict of $1.3 million, as in this case, amounts to a median cost of $500,000.00 through

In sum, the Court concludes that Shugart again falls far short of meeting his burden of establishing his entitlement to the attorneys' fees sought in this case. Because he fails at a fundamental level to establish the reasonableness of the rates or hours at issue, the Court declines to reach the issue of fee enhancement. The question, therefore, is whether the Court should fashion its own determination as to a reasonable hourly rate and reasonable number of hours expended, or deny Shugart's request.

As indicated above, the Court has discretion to award costs and reasonable attorneys' fees to a prevailing party under both the Copyright Act and the DMCA. 17 U.S.C. §§ 505, 1203(b)(4), (5). *See also Frank Music Corp.* , 886 F.2d at 1556 ("Plaintiffs in copyright actions *may* be awarded attorney's fees simply by virtue of prevailing in the action: no other precondition need be met, although the fee awarded must be reasonable.") (emphasis added). "'A district court's fee award does not constitute an abuse of discretion unless it is based on an inaccurate view of the law or a clearly erroneous finding of fact.'" *Fantasy, Inc.*, 94 F.3d at 556 (quoting *Schwarz v. Secretary of Health & Human Serv.*, 73 F.3d 895, 900 (9th Cir. 1995)). *See also Mattel Inc. v. Walking Mt. Prods.*, 353 F.3d 792, 815 (9th Cir. 2003) ("Generally, a district court's order on attorney's fees may be set aside if the court fails to state reasons for its decision or applies the incorrect legal standard.")

Shugart also asserts his right to attorneys' fees under Washington State law due to provisions in the film delivery memo. However, he fails to cite any applicable Washington law,

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trial. However, he failed to provide a copy of the survey for the Court's review, asserting restrictions on copying. Also, the Court clarifies that Shugart, not Propet, contended that this dispute involved some $30 million, based on his estimate of Propet's gross revenue for the period in question. (*See* Dkt. 111 at 6 and Dkt. 113 at 7.)

pointing only to a case discussing attorneys' fees under the Washington Law Against Discrimination, *see Chuong Van Pham v. Seattle City Light*, 159 Wn.2d 527, 538-40, 151 P.3d 976 (2007), in support of his continued request for a contingency-based enhancement. Given this failing, the Court construes Shugart's request for fees only under the federal law specifically addressed in his motion.

The Court's discretion on the issue of attorneys' fees extends to a procedural or like failing on the part of the prevailing party. *See, e.g.*, *Petrone v. Veritas Software Corp.*, 496 F.3d 962, 972-74 (9th Cir. 2007) (upholding district court's decision to deny application for attorney's fees filed fifteen days late; stating: "In the end, this is a decision committed to the discretion of the district court. While the district court would not have abused its discretion in granting Malone's fee application, it did not abuse its discretion in denying it.") Here, Shugart twice submitted deficient motions for attorneys' fees. The second motion followed an Order from the Court spelling out the basic requirements for a fee application. The Court finds Shugart's failure to comply with those basic requirements inexcusable. As such, the Court exercises its discretion to deny his application.

Lastly, the Court addresses Shugart's request for an award of costs. In his initial motion, Shugart requested a total of $868.23 in costs. (Dkt. 177 at 1.) Billing records attached to both his previous and renewed motion reflect that those costs derive solely from the period of Shugart's representation by Mann and Whitaker. (*Id.*, Ex. C at 14 and Dkt. 189, Ex. F. at 16.) Neither motion contains any discussion regarding those costs. Nor does Propet specifically challenge the costs.

The Court finds a partial award of the costs sought appropriate. Shugart here

appropriately seeks costs for photocopying, the creation of tabs for trial notebooks, a conference room expense, and for the purchase of a trial transcript. (*Id.*) The Court finds no basis, however, for the costs associated with the purchase of lunch during trial. Accordingly, excluding the lunch costs, the Court finds Shugart entitled to an award of $818.26 in costs.

CONCLUSION

For the reasons described above, Shugart's renewed motion for attorneys' fees is DENIED, while his request for costs is GRANTED in part. The Court finds Shugart entitled to an award of costs in the amount of $818.26.

DATED this 2nd day of May, 2008.

Mary Alice Theiler
United States Magistrate Judge